APPEAL NO. 021789
FILED SEPTEMBER 4, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on June 13, 2002. The hearing officer determined that the appellant (claimant herein) did not sustain a compensable injury on _____, and consequently, did not have disability. The claimant appeals, contending these determinations were contrary to the evidence and that the hearing officer erred by admitting unsworn witness statements. The respondent (carrier herein) responds that the hearing officer's decision was supported by the evidence and that the unsworn statements were properly admitted.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The claimant testified that she was injured while working as a seamstress, she fainted and fell to the floor. The hearing officer points to inconsistencies between the claimant's description of the injury and the claimant's prior statements, with the statements of coworkers, and with some of the history of the claimant's injury in the medical record. On appeal, the claimant attributes some of these inconsistencies to her lack of ability with the English language and argues that the hearing officer erred in admitting unsworn statements of her coworkers over her objection.

First, we note that the hearing officer did not err by admitting the unsworn statements of the claimant's coworkers. It is undisputed that the carrier properly and timely disclosed the identity of these witnesses and that the statements were signed by the witnesses. There is simply no requirement that these statements be sworn to be a admitted at a CCH, which under the 1989 Act, is not subject to the Texas Rules of Civil Procedure. *See* Texas Workers' Compensation Commission Appeal No. 92490, decided October 28, 1992.

The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993; Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the

testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

A finding of injury may be based upon the testimony of the claimant alone. Gee v. Liberty Mutual Fire Insurance Co., 765 S.W.2d 394 (Tex. 1989). However, as an interested party, the claimant's testimony only raises an issue of fact for the hearing officer to resolve. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). In the present case the hearing officer found no injury contrary to the testimony of the claimant and there was sufficient evidence to support that finding. The claimant had the burden to prove she was injured in the course and scope of her employment. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). We cannot say that the hearing officer was incorrect as a matter of law in finding that the claimant failed to meet this burden.

Finally, with no compensable injury found, there is no loss upon which to find disability. By definition disability depends upon a compensable injury. *See* Section 401.011 (16).

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE** and the name and address of its registered agent for service of process is:

CT CORPORATION SYSTEM
350 N. ST. PAUL ST.
DALLAS, TEXAS 75201.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Philip F. O'Neill
Appeals Judge